IN THE HIGH COURT OF DELHI

Crl.M.C. No.2944/2004

Shri Balaji Hospital Pvt. Ltd. & Anr. ... Petitioners
! through: Mr.Ranjeet Singh, Adv.

VERSUS

$ Shri Om Prakash Khatri ... Respondent
^ through: Mr.Ajay Kumar and
Mr.Praveen Dabas, Advs.

RESERVED ON: 08.08.2007

% DATE OF DECISION: 17.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioners Balaji Hospital Pvt. Ltd. and Dr.P.K.Jain, a consultant surgeon with said hospital pray that complaint No.39/2001 under Section 304-A read with Section 34 of the Indian Penal Code be quashed.

2. Petitioners have been summoned by the learned Metropolitan Magistrate in a complaint filed by Om Prakash Khatri under Section 190 read with Section 200 Cr.P.C. 1973.

3. Undisputed facts are that the mother of the

complainant was admitted at Balaji Hospital Pvt. Ltd. i.e. petitioner No.1 for gall bladder surgery. On 14.1.2003, the gall bladder was removed. Surgery was conducted by petitioner No.2. The patient was discharged on 22.1.2003. It is also not in dispute that when the gall bladder was removed it was full of large stones and had pus accumulated within it. The gall bladder was sent to a pathologist for an opinion whether it was cancerous.

4. Hereinafter, parties are at variance as to what happened. Whereas the complainant says that the petitioners sent the gall bladder to the path-lab. Petitioners allege that the gall bladder was handed over to the complainant and he delivered the same to the path-lab and it was his responsibility to collect the report and take necessary follow up measure.

5. As per the complainant, his mother continued to complain of abdominal pain. On 11.3.2003, due to acute abdominal pain she was taken to Jaipur Golden Hospital. The attending doctor admitted the mother of the complainant. She was diagnosed as suffering from cancer which had spread in the stomach cavity. The doctor treating the mother of the complainant opined that there was zero chance of recovery. Mother of the complainant died on 23.3.2003.

6. According to the complainant had this fact been

disclosed in the month of January 2003, as per opinion of the doctors at Jaipur Golden Hospital mother of the complainant could have been saved.

7. The rival versions of the petitioners is that after the surgery on the mother of the complainant on 14.1.2003 the gall bladder was handed over to the complainant with a direction that he should deliver the same at Dr.Verma's Diagnostic Clinic at Janakpuri to test whether the same was cancerous. That the complainant handed over the gall bladder at said diagnostic centre but was negligent in not obtaining a report from the diagnostic centre.

8. Thus, the petitioners washed their hands of the charge of negligence.

9. It has not been disputed by the petitioners that the report of the pathologist pertaining to the gall bladder of the mother of the complainant records that the same was cancerous.

10. Whether complainant delivered the gall bladder of his mother to the diagnostic centre on 14.1.2003 or whether petitioners delivered the same to the diagnostic centre is a question of fact. It needs evidence before it can be resolved. Evidence can come on record only when trial is conducted.

11. That apart, it is not in dispute that when removed

after surgery by petitioner No.2, gall bladder was full of stones and had accumulated pus. There was a possibility that the same was cancerous. That is why petitioner No.2 required the gall bladder to be sent to a pathologist for a detailed analysis. Assuming he handed over the gall bladder to the complainant i.e. the son of the patient to be delivered to the pathological laboratory, was it not the duty of petitioner No.2 to enquire and ensure that the report was received from the path lab? It would certainly need trial to decide whether it was the duty of the surgeon who performed the operation to ensure that report of a pathologist was obtained to rule out the possibility of the gall bladder being cancerous, for the reason, if it was found to be cancerous, further treatment would have been necessary. This issue would require expert evidence to be led as to how a doctor should have ordinarily conducted himself in view of the physical condition of the gall bladder which was noted by him after surgery was performed.

12. Looked at from any angle, questions which arise for consideration cannot be decided without evidence being led.

13. As regards the complaint, suffice would it be to note that it was not the case of the petitioners that the same lacks in material averments constituting a charge under Section 304-A IPC.

14. The petition is dismissed.

15. Trial Court record be returned forthwith.

August 17, 2007 (PRADEEP NANDRAJOG)
dk JUDGE